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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,862	12/22/2000	Fredrick J. Aley	17410-00008	3682

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EXAMINER

ROBINSON BOYCE, AKIBA K

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,862

Applicant(s)

ALEY, FREDRICK J.

Examiner

Akiba K Robinson-Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/18/01, 9/23/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. Due to communications filed 12/22/00, the following is a non-final first office action. Claims 1-26 are pending in this application and have been examined on the merits. Claims 1-26 are rejected as follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 15-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to a non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of :

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful art” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim, the recited process must somehow apply, involve, use, or advance the technological arts.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breath life and meaning into the preamble.

In the present case, the preamble of claim 15 recites “A method for producing multi-year forecasts for products produced in a manufacturing business using an integrated marketing-production-finance system...”. However, since no computer hardware or software embodied on a tangible medium are in the body of the claim, claim 15 and all claims that depend from it (16-26) are therefore non-statutory.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-10, 12, 13, 15-24, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erwin et al (US 6,249,770), and further in view of Ando (US 6,032,125).

As per claim 1, Erwin et al discloses:

at least one computer, (col. 4, lines 47-49, computer);

a server configured with a plurality of spreadsheets to integrate a multi-year market forecast, (Col. 2, lines 40-45 and lines 56-59, forecast parameters shown, Col. 3, lines 13-19, creates financial forecast for a pre-determined number of years for a company, col. 13, lines 39-44, shows a spreadsheet option), production and performance parameters, (col. 2, lines 31-33, performance of a company),

the following is inherent with Erwin et al since they are included amongst performance parameters: such as capacity, efficiency, waste levels, materials, utilities and labor cost, and production scheduling; and

a network interconnecting said server to said computers, (Col. 2, line 67-col. 3, line 2, computer network).

Erwin et al does not specifically disclose products produced with production specifications, but does disclose integrating a multi-year market forecast for the operation of company where specific inventory is taken into account as shown in col. 3, lines 13-19 and Fig. 8 (Change in inventory is included in report formulae).

However, Ando discloses products produced with production specifications, (Col. 5, lines 17-23, product code, sales stopping date of the product can be considered to be out of the target of forecasting). Ando discloses this limitation in an analogous art for the purpose of showing that the product specifications serves as an important variable of the operating environment.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include products produced with production specifications into a multi-year forecast with the motivation of determining a forecast for product data.

As per claims 2-6, and 16-20, Erwin et al does not specifically disclose wherein said server is configured to determine at least one of per unit and per brand costing [of materials, of labor, of utilities, of sales discounts], but does disclose the cost of goods sold in Fig 5.

However, Ando discloses:

Wherein said server is configured to determine at least one of per unit and per brand costing, (Col. 1, lines 14-15, sales unit price for a product, this costing includes costing of materials, of labor, of utilities, of sales discounts since all listed are part of the manufacturing process of a product). Ando discloses this limitation in an analogous art

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for the purpose of showing that the demand has an effect on the sales unit price of products.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to determine at least one of per unit and per brand costing [of materials, of labor, of utilities, of sales discounts] with the motivation of determining the effect that this type of cost would have on a market forecast.

As per claims 7, 21, Erwin et al discloses:

wherein said server is further configured for input of operating expenses and fixed expenses for the business, (Col. 6, lines 37-39, cash flow of entity's operation).

As per claims 8, 22, Erwin et al discloses:

wherein said server is further configured to automatically show impacts to Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) as a result of any change to any parameter in marketing, finance, or production, (Col. 6, lines 39-43, shows use of operating earnings before income tax, where income from discontinued operation represents Depreciation and Amortization since in the marketing art, Depreciation and Amortization is debited as an expense in the profit section).

As per claims 9, 23, Erwin et al does not specifically disclose wherein said server is configured to determine whether capacity for production is at capacity, below capacity, or above capacity using a scheduling analysis, but does disclose the growth rate of a company in Col. 3, lines 21-25.

However, Ando discloses:

wherein said server is configured to determine whether capacity for production is at capacity, below capacity, or above capacity using a scheduling analysis, (Col. 2, line 66-Col. 3, line 3, shows level of production). Ando discloses this limitation in an analogous art for the purpose of showing that the level of production can be presented to users.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to determine whether capacity for production is at capacity, below capacity, or above capacity using a scheduling analysis with the motivation of determining the rate of production.

As per claims 10, 24, Erwin et al discloses:

wherein said server is configured to determine a production schedule based on labor constraints and production restraints, (Col. 6, lines 37-43, creating a forecast from discontinued operations and non-recurring event information).

As per claims 12, 26, Erwin et al discloses:

wherein said server is configured to receive and store at least one of marketing data, production data, product data, pricing data and cost data, (col. 6, line 44 restructuring costs).

As per claim 13, Erwin et al discloses:

wherein said network is at least one of the Internet, an intranet, a local area network LAN, a wide area network (WAN), dial-in-connections, cable modems and special high-speed ISDN lines, (Col. 3, lines 46-49, Internet).

As per claim 15, Erwin et al discloses:

uploading data relating to at least one of production specifications, production and performance parameters and production schedules for individual product lines, (Col. 2, lines 40-45, receives information about forecast parameters for a company); and

determining any changes to the forecasts based upon uploaded data, (col. 9, lines 38-43, (shows changes to file information can effect data in reports).

Erwin et al does not specifically disclose production specifications, but does disclose integrating a multi-year market forecast for the operation of company where specific inventory is taken into account as shown in col. 3, lines 13-19 and Fig. 8 (Change in inventory is included in report formulae).

However, Ando discloses production specifications, (Col. 5, lines 17-23, product code, sales stopping date of the product can be considered to be out of the target of forecasting). Ando discloses this limitation in an analogous art for the purpose of showing that the product specifications serves as an important variable of the operating environment.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include products produced with production specifications into a multi-year forecast with the motivation of determining a forecast for product data.

7. Claims 11, 14, 25, are rejected under 35 U.S.C. 103(a) as being unpatentable over Erwin et al (US 6,249,770), and further in view of Ando (US 6,032,125), and further in view of Ainsbury et al (US 6,078,924).

As per claim 11, 25, neither Erwin et al nor Ando disclose wherein said server is configured to notify a user of critical situations resulting from at least one of a marketing forecast, production schedule change, a product specification change and a change in production capability, but Erwin et al does disclose a system that determines a marketing forecast in col. 3, lines 13-19.

However, Ainsbury et al discloses:

wherein said server is configured to notify a user of critical situations resulting from at least one of a marketing forecast, production schedule change, a product specification change and a change in production capability, (col. 40, lines 61-66, error notices). Ainsbury et al discloses this limitation in an analogous art for the purpose of showing that notification can be sent to the user on changes.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to notify a user of critical situations resulting from at least one of a marketing forecast, production schedule change, a product specification change and a change in production capability with the motivation of informing the user of any critical change.

As per claim 14, neither Erwin et al nor Ando disclose:

wherein said server is configured with a revision log incorporating a listing of all changes and revisions to said spreadsheets by date, but Erwin et al does disclose

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changing the scenario and updating/recalculating forecasts for every Input account in a company file in col. 11, lines 36-37.

However, Ainsbury et al discloses:

wherein said server is configured with a revision log incorporating a listing of all changes and revisions to said spreadsheets by date, (Col. 47, lines 50-52, log of modifications. Ainsbury et al discloses this limitation in an analogous art for the purpose of showing that maintaining a list or log of modifications can optimize synchronization.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include a revision log incorporating a listing of all changes and revisions to said spreadsheets by date with the motivation of keeping a record of changes made.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 703-305-1340. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



A. R. B.
November 4, 2004



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